

FORENSIC ASSESSMENT, & Mental Competency

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Concept of Competence

- Miranda Rights,
- Understanding the Proceedings, and
- Capable of Assisting in Defense.

Dual Nature of Competence

- Mental Disease or Defect,
- Developmental Disability, Or
- Both...

Measuring Competence

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View of the Client

Proceed, and



id Assisting in the Defense.

MPETENCE

◆ Starts with Miranda Rights/Warnings

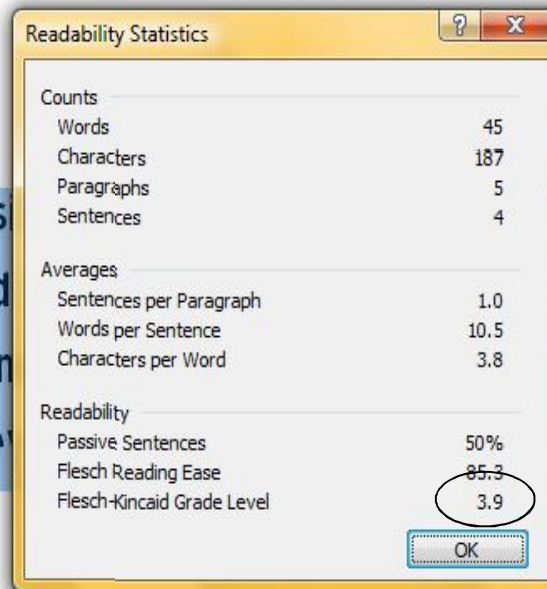
- The literature has been building about how problematic Miranda Rights/Warnings have become, see your packet for a summary article by Rogers in 2008...
- ***How problematic, you may ask?***
- Greenfield, Dougherty, Jackson, Podboy, and Zimmermann (2001) questioned the uniformity of Miranda warnings and found **21 different Miranda versions** used in New Jersey counties alone, with reading levels that varied from **Fourth Grade** to a **Sophomore Year** in college...
- Helms (2003), focusing on state and federal jurisdictions, found at least **thirty-one variations** with reading levels ranging from **Fifth Grade, Fourth Month** through **Ninth Grade, Ninth Month**.
- Per Rogers (2008) Miranda Warnings range from **21 words to 408 words...**

◆ Miranda Rights/Warnings

◆ So, how do you know the reading requirements for your jurisdiction...?

Sample Miranda Warning

- → You have the right to remain silent.
- → Anything you say may be used against you in court.
- → You have the right to an attorney to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- → If you cannot afford an attorney, one will be appointed for you before any questioning if you cannot afford one.



Readability Statistics	
Counts	
Words	45
Characters	187
Paragraphs	5
Sentences	4
Averages	
Sentences per Paragraph	1.0
Words per Sentence	10.5
Characters per Word	3.8
Readability	
Passive Sentences	50%
Flesch Reading Ease	85.3
Flesch-Kincaid Grade Level	3.9
OK	

◆ Miranda Rights/Warnings

In Microsoft Word For Example:

- Click the **Microsoft Office Button**
- Then click *Word Options*.
- Click *Proofing*.
- Make sure *Check grammar with spelling* is selected.
- Under *When correcting grammar in Word*, select the *Show readability statistics* check box.



This will provide you with what is called the *Flesch-Kincaid Grade Level*, i.e. year, then month in school.

Another Source: www.editcentral.com/gwt1/EditCentral.html

◆ Miranda Rights/Warnings

Montana Code Annotated 2009 46-6-107

- "...has the right to remain silent, that anything the person says can be used against the person in a court of law, that the person has the right to speak to an attorney and to have an attorney present during any questioning, and that if the person cannot afford an attorney, one will be provided for the person at no cost to the person."

e:

ex:

al:

Score	Notes
90.0–100.0	easily understandable by an average 11-year-old student
60.0–70.0	easily understandable by 13- to 15-year-old students
0.0–30.0	best understood by university graduates

◆ Miranda Rights/Warnings – SO...?

- Do you know your client's reading ability?
- Warning signs are:
 - Did they drop out of school, if so, when?
 - Were they ever assessed as an adolescent or adult, in school or otherwise for their ability to read?
 - Were they ever diagnosed with a learning disability.
- Be cautious and know there is a difference between reading ability and receptive language ability – adaptive behavior measure for best access.

◆ Miranda Rights/Warnings

■ CASE-IN-POINT

40 year old male, who...

Graduated High School as a Special Education Student, had been in Special Education through his entire education, and became a United States Marine.

CHARGED: Failure to Register as a Violent Offender

Assessment

Adaptive Behavior Composite of 58, Communication Domain 32

Full Scale Intellectual Quotient 56, Working Memory 57

Reading Ability First Grade – Second Grade, Seventh Month

Diagnosis

Reading Disorder, Mild Intellectual Disability.

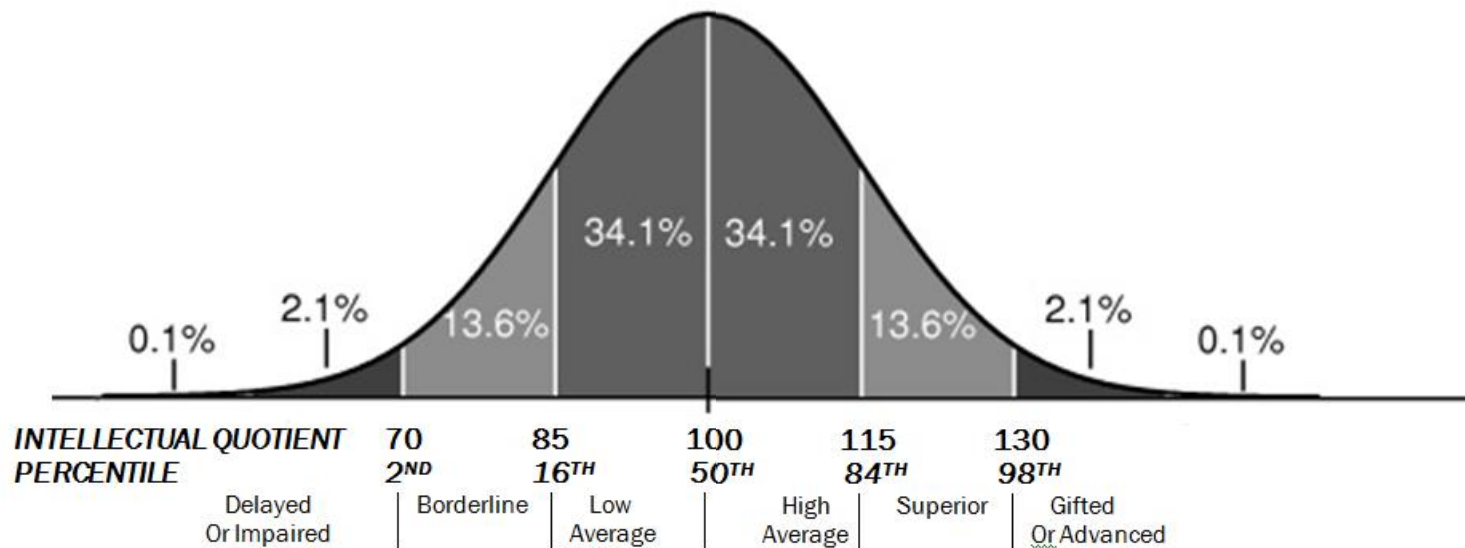
◆ Miranda Rights/Warnings

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Bell Curve
Or, Normal Distribution
Approximation



◆ Determination of Fitness to Proceed

- MCA 46-14-221; and MCA 46-14-206 (c) - *REPORT*

“...defendant suffers from a mental disease or defect or developmental disability...”

capacity to
proceedings
defendant..”

st in the defendant’s

◆ Report of Examination, MCA 46-14-206

- (1) A report of the examination **MUST** include the following:
 - (a) a description of the **nature of the examination**;
 - (b) a **diagnosis** of the mental condition of the defendant, including an **opinion as to whether the defendant suffers from a mental disorder**, as defined in 53-21-102, and may require commitment **or is seriously developmentally disabled**, as defined in 53-20-102;



◆ *The Rest of the Report of Examination*

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, *an opinion as to whether the unwillingness of the defendant was the result of the mental disease or defect or developmental disability.*

◆ *In other words, it still requires a write-up that states an opinion...*

◆ *But, what of consent?*

◆ *MCA, attorney acting on client's behalf...?*

◆ Determination of Fitness to Proceed

MCA 46-14-206 (c) – HOLD on I for a Moment...

“...defendant suffers from a mental disease or defect or developmental disability...”

**capacity to
proceedings
defendant..”**

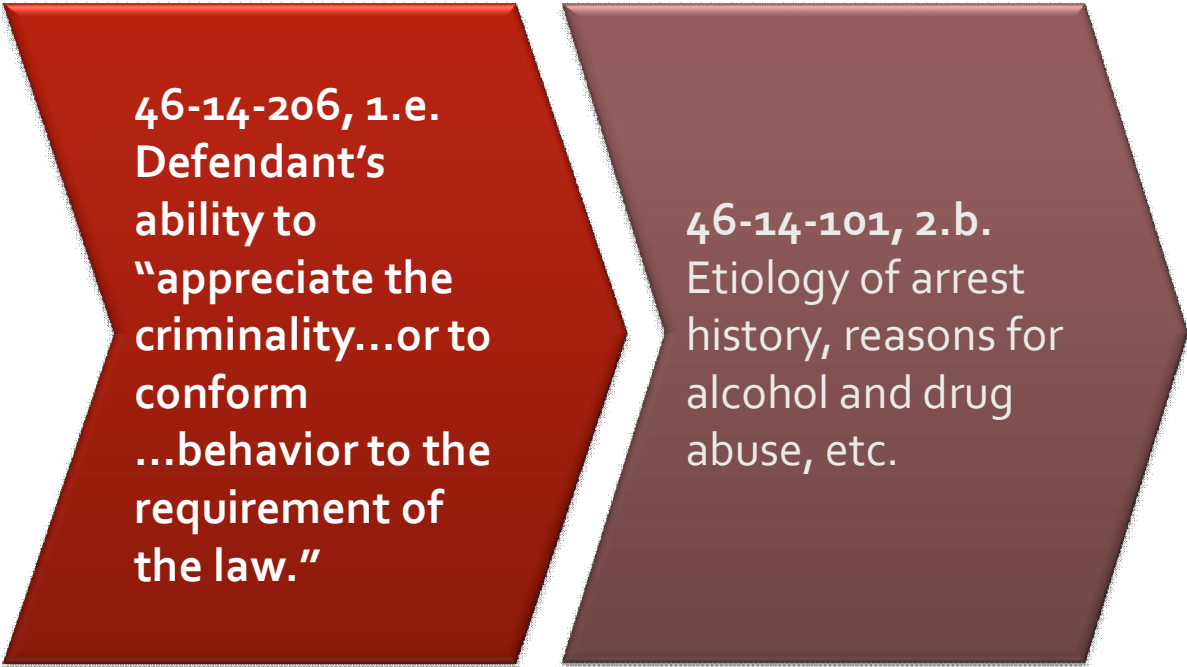
st in the defendant’s

◆ **Not Fitness to Proceed, MCA 46-14-206**

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect or developmental disability, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

◆ ***Don't ask for these questions to be answered at the same time, it can hurt your case...***



46-14-206, 1.e.
Defendant's
ability to
"appreciate the
criminality...or to
conform
...behavior to the
requirement of
the law."

46-14-101, 2.b.
Etiology of arrest
history, reasons for
alcohol and drug
abuse, etc.

◆ More complicated than it seems...

And, overcoming inherent biases!

Sensorium-intactus, and Cognitocentric

- Does the defendant understand the charge, do they understand the possible consequences of conviction?

stand the Judge's role, and what powers through the Court?

what a Prosecuting Attorney is, and what definition?

what a Defense Attorney is, and what definition?

des the myriad of elements that work as reading documents, interpreting extracting with counsel, interacting with the

◆ *Biases such as....*

Sensorium-intactus, and Cognitocentric



◆ View of the Process...



- ◆ Fundamentally, to “understand the proceedings” a defendant needs to be capable of considering the *entire process* from *multiple dimensions* and *hold these dimensions in their mind all at once*, which we, as professionals often take for granted...



- ◆ Mostly this is due to our cognitive capacities, that we have an intact sensorium, and are not actively suffering from a mental illness.

- ◆ You may recognize this under the terms *ethnocentric* or *egocentric*...
- ◆ Whichever the case may be, the challenge is to break down how many dimensions the defendant is capable of working in at any one time, and,
 - Evaluate this against what demands are placed upon the defendant during the proceeding,
 - Evaluate the defendant's ability to juggle these elements, and *respond* in a manner that serves their best interests.



◆ Case-In-Point, Developmental Disabilities.

- Often unrecognized...and not properly assessed...
- Borderline Intellectual Functioning – 3, maybe 4 balls...
- Levels of Intellectual Disability:
 - Mild: 3 balls, or objects.
 - Moderate: 2 balls, or objects.
 - Severe: 1 ball, or object.
- Amplified by mental illness, psychological adjustment problems, or academic challenges.



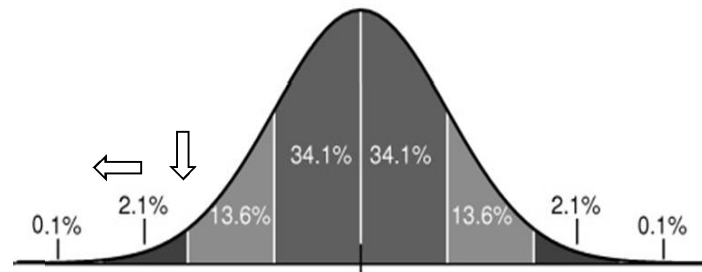


mental Disability, or, Both...

F COMPETENCE

retardation...or any other neurologically disabling condition closely related to mental retardation; (b) requires treatment...; (c) originated before...18; (d) ...continue indefinitely...(e) results in... substantial disability. "

Disease or Defect



◆ What is a Mental Disease or Defect...?

- If-Then, Statements...
- If not antisocial behavior, not a developmental disability, not alcohol or drug intoxication, then it must be....

Disease or Defect



"Mental illnesses

This term is usually used to refer to severe mental health problems in adults."



Facts"

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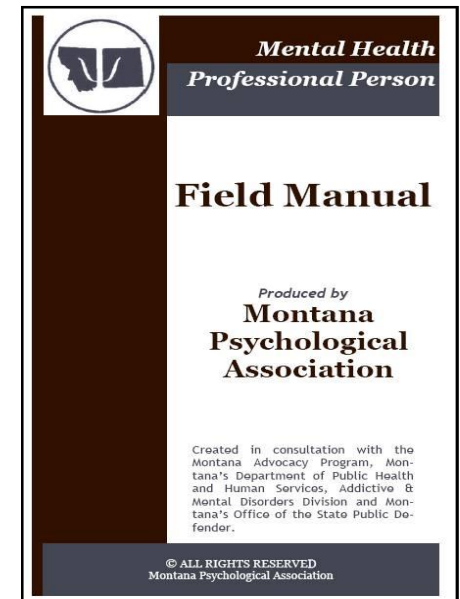
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panic
derline
ss is that

Neither the *American Psychiatric Association* or the *American Psychological Association* offer a ready definition of Mental Illness...

I Disease or Defect

53-21-102, (7)

"...a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment."



Developmentally Disabled

53-20-102, 18.

"Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;**
- (b) is impaired in cognitive functioning; and**
- (c) cannot be safely and effectively habilitated through voluntary use of community-based services because of behaviors that pose an imminent risk of serious harm to self or others. "**

Intellectual disability is a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18.

Intellectual functioning—also called intelligence—refers to general mental capacity, such as learning, reasoning, problem solving, and so on.

One criterion to measure intellectual functioning is an IQ test. Generally, an IQ test score of around 70 or as high as 75 indicates a limitation in intellectual functioning.

Standardized tests can also determine limitations in adaptive behavior, which comprises three skill types:

Cont.

Conceptual skills—language and literacy; money, time, and number concepts; and self-direction.

Social skills—interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e., wariness), social problem solving, and the ability to follow rules/obey laws and to avoid being victimized.

Practical skills—activities of daily living (personal care), occupational skills, healthcare, travel/transportation, schedules/routines, safety, use of money, use of the telephone.

On the basis of such many-sided evaluations, professionals can determine whether an individual has an intellectual disability and can tailor a support plan for each individual.

Competence



Diagnostic Manual – Intellectual Disability (DM-ID)

The National Association for the Dually Diagnosed (NADD), in association with the American Psychiatric Association (APA), developed a Manual that is designed to be an adaptation of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition—Text Revision (DSM-IV-TR). The title of this Manual is the Diagnostic Manual - Intellectual Disability (DM-ID): A Textbook of Diagnosis of Mental Disorders in Persons with Intellectual Disability.

**Dually
ociation. The
for an open
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ental illness**

◆ So, why is important to consider all three of these matters, mental illness, developmental disabilities and both...?

- Case-In-Point, Completely Missed for Years, and Providers Snowed...
 - Who knew, Special Education in College?
 - Not psychotic after all...
 - Suffering from an Intellectual Disability, and had been for years...
 - Way bad substance dependence problem.

◆ So, why is important to consider all three of these matters, mental illness, developmental disabilities and both...?

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ogical Evaluation and

OMPETENCE

◆ The Basic Three Forms of Reports

- Mental Health Evaluations
- Psychological Evaluations
- Psychological Assessments

Mental Health Evaluations

Describe a basic Social History, often a Mental Status Exam, a Diagnostic Impression and Recommendations. Generally, these are conducted by any independently licensed provider in the behavioral healthcare field.

Mental Health Appraisals

These are basically the same as a Mental Health Evaluation but may also include a self-rated inventory that requires minimal training, supervision and experience to administer, score and interpret.

Both are rarely used in forensic settings, and suggest basic training in diagnosis and treatment.

◆ Psychological Evaluations, and, Psychological Assessments

- These may be done for general purposes, or for forensic purposes and imply a much higher level of training, supervision and experience.



◆ Psychological Evaluations, and, Psychological Assessments

- Often these terms are used interchangeably, but within the literature using the term assessment implies a higher level of competence and a more refined work product.

FORENSIC SPECIALIZATION

Within the field there are several very rigorous standards that the person conducting these evaluations or assessments must have completed and that these evaluations or assessments must live up to in order to meet national standards.

In this regard, forensic specialists are either Board Certified by a reputable Board, or have years of Training, Supervision and Experience that meets these rigorous standards.

◆ Basics of Competence in Psychological Evaluations and Assessments

- Standards to Consider:
- *The American Psychological Association's Test User Qualifications (2001), a Well-Established Threshold.*

APA's Guidelines for Test User Qualifications	
An Executive Summary	
Samuel M. Turner	University of Maryland
Stephen T. DeMers	University of Kentucky
Heather Roberts Fox	American Psychological Association and Towson University
Geoffrey M. Reed	American Psychological Association

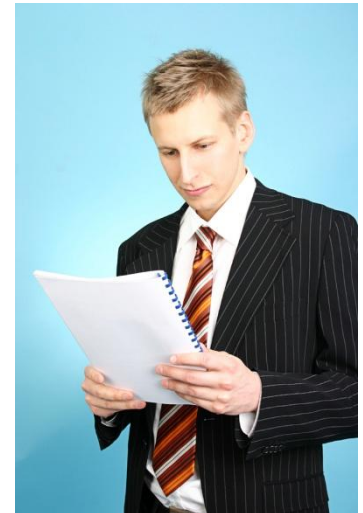
- *Society for Personality Assessment Standards (2006).*

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As such, it repre-



◆ Standards to Consider:

- *Interpreting Psychological Assessment Instrument Results Are As Complex as Reading: Mammograms, Pap Smears, MRIs and Electrocardiograms (See Daw, 2001 and Meyer, et.al., 2001)*

Psychological Testing and Psychological Assessment

A Review of Evidence and Issues

Gregory J. Meyer	University of Alaska Anchorage
Stephen E. Finn	Center for Therapeutic Assessment
Lorraine D. Eyde	U.S. Office of Personnel Management
Gary G. Kay	Georgetown University Medical Center
Kevin L. Moreland	Fort Walton Beach, FL
Robert R. Dies	New Port Richey, FL
Elena J. Eisman	Massachusetts Psychological Association
W. Kubiszyn and Geoffrey M. Reed	American Psychological Association

- Requirements, An Example
 - The Board of Psychologists Requirements includes the following Standard of Proof, i.e. Submitting Three Sample Reports.

(v) In addition, the person's training program must include: adequate training in psychodiagnosis, psychological assessment and intervention procedures. Training must provide skills which encompass several types of assessment and intervention procedures, rather than being restricted to a single type. The applicant must be familiar with major assessment and intervention techniques and their theoretical bases.

PSYCHOLOGISTS

24.189.607

REQUIRED SUPERVISED EXPERIENCE (1) Acceptable must involve the practice of psychology and must have been at a professional level in order to be considered satisfactory

- Requirements, Cont.

- (2) A completed application file consists of the following:
 - (a) a completed and notarized application form;
 - (b) transcripts of all graduate work completed;
 - (c) program and course descriptions from the official college catalog(s);
 - (d) three work samples;
 - (e) a copy of a self-query of the National Practitioner Data Bank; and
 - (f) completed reference forms from a minimum of five references attesting to the applicant's good moral character.
- (3) Work samples must be written examples of recent work (within two years of application date), at least two of which must be psychological evaluations. The purpose of the evaluations is to demonstrate competence in history taking, administration and interpretation of formal tests of intelligence, and administration and interpretation of objective and projective tests of personality. Tests utilized must be those widely recognized and respected in the practice of psychology. Projective testing will include projective techniques, at least one of which is a Rorschach or an apperception test. Each of the two evaluations must include the integration and interpretation of history taking, intelligence testing, and personality testing leading to an appropriate diagnosis and recommendations. Evaluations must also demonstrate competence in formulating appropriate diagnoses using the five axes specified in the Diagnostic and Statistical Manual of Mental Disorders (DSM) as well as making appropriate recommendations. Work samples do not include newspaper or other similar articles or publications. All identifying information must be removed from work samples submitted to the board. Questions regarding the work samples may be included in the oral examination and candidates may be requested to present the raw data upon which their work samples were based.

◆ Forensic Evaluations and Assessments

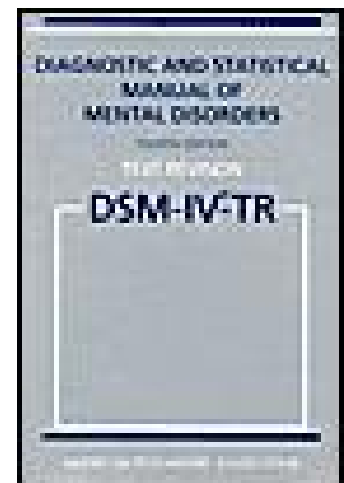
- The standard recognized nationally for conducting a fundamentally appropriate forensic assessment was written by Kirk Heilbrun in 1992 in the journal *Law and Human Behavior*.
- There, Heilbrun lays out seven standards...

ting in

1. Adequately available and properly reviewed.
2. Adequate reliability, .80 or higher.
3. Relevant to the legal issue.
4. Standardized administration.
5. Applies to the population.
6. Use objective instruments with a formula that drives results.
7. Consider the individual's response style.

◆ Diagnosis, and Report of Examination...

- Some Evaluators will cite the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision* (DSM-IV-TR) as a reason not to make a diagnosis.
- This is not what the book says under the title, *Use of DSM-IV in Forensic Settings...* (pp. xxxii-xxxiii).
- The authors caution the diagnostician, “...imperfect fit between the questions of ultimate concern to the law and... clinical diagnosis.... DSM-IV mental disorder is not sufficient...for legal purposes...”



◆ So, why is training, supervision, and experience so important...?

- Case-In-Point #1, Cannot Read the Instrument.
- Case-In-Point #2, Non-Standardized Administration, Leave the Instrument and Invalidate Its Use.
- Case-In-Point #3, Instrument Selection, Does not Apply to that Population (Competence Assessment).





Competence/Fitness to Proceed,

VIEW OF THE

◆ Circling Back: Report of Examination...

- (1) A report of the examination **MUST** include the following:
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◆ Nature of the Examination: The Architecture of a Sound Psychological Assessment.

- The referral question drives the entire assessment, and should be anchored in statute, and express the concerns counsel has about the defendant

- Ensuring that the defendant has informed consent is critical, and that they have the right to remain silent as well..

e instruments used in the assessment
oth of the evaluative process. Moreover,
an array, as batteries of instruments are
h patterns of responses.

on is critical in understanding the
ory and current circumstance.

the defendants whole life history
roughly three to four pages.

specific abilities or the ability to function,
nic, adaptive, cognitive, personality,
c.

is a critical cross-check for 'most' evaluators.

Recommendations

Here, seat the response to the referral question into the language of the statute. Relate how the diagnostic conceptualization answers the referral question(s).

Other Considerations

Often, there are questions that remain or matters left to be addressed that reflect on serving the best interests of the defendant and/or society.

ed View of Defendant

The Science of a Psychological Assessment

Pattern is distilled from all elements of the Psychological Assessment; and hypotheses are tested throughout – some calling for additional assessment measures.

Anomalies are addressed, and subjective experience is factored in but only so long as it holds up with objective data and is put aside just like any hypothesis – findings from well-constructed psychological assessment instruments can be surprising and difficult to predict.

One instrument after the other, combined with the Collateral Data, Social History and Mental Status Interview should combine into a pattern that answers the question(s) at hand.

So, Fitness to Proceed...

What does the collateral data say, and we're not talkin' notes at the jail...

What did they say when they were asked?

What did they understand about the charges against them, and possible consequences of being convicted?

What did the objective scientific instruments say about their competence?

What did they say about the alleged crime to you or others?

Does the defendant think they are fit to proceed?

Case-In-Point, Easy to Miss Unless you Look at the Whole Picture and Do Your Homework

Case-In-Point #1, Can't Answer the Question...

There is no way to answer this with the current state of affairs.
Even after combing through the assessment and researching the
literature until it hurts.

ner's Complaint and Proposed Direction: Munchausen Syndrome
y, Factitious Disorder by Proxy, and Fabricated and/or Induced
Illness in Children

Michael R. Bütz
Aspen Practice

F. Barton Evans
Northern Rockies Center for Forensic and
Therapeutic Assessment

Rebecca L. Webber-Dereszynski
Independent Practice, Billings, Montana

Case-In-Point #2, She Seems Nice Enough, But...

Review the assessment findings very closely,
holding out, and doing the homework with collateral sources.



D PERHAPS,

Thank You !

